IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FIFTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 3728 of 2004

Between:

Vijaya Medical & Fancy Stores, Singh Nagar, Vijayawada rep.by its Proprietor Sri G.L.Vijaya Kumar

..... PETITIONER

AND

1 The Chairman, HDS Government General Hospital, Vijayawada.
2 The Superintendent/Convener, HDS, Government General Hospital, Vijayawada.
3 Santosh Medical Stores, Betencharla, Kurnool District, rep.by Sri Damodar.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to declare the action of the respondents 1 and 2 herein in accepting the tender of the 3rd respondent pursuant to the Tender Notice Rc.No.1807/A4/04, dated 30th January, 2004 as illegal, arbitrary and unjust and direct the respondents 1 and 2 herein to consider awarding of the contract in favour of the petitioner herein by issuing appropriate writ of Mandamus or any other order or direction.

For the Petitioner: MR.M.V.S.SURESH KUMAR, Advocate.

For the Respondent Nos. 1 & 2.: GP FOR MEDICAL HEALTH &

FAMILY WELFARE.

For Respondent No.3 : Mr. G. Vidya Sagar, Advocate.

The Court at the admission stage made the following :

This Writ Petition is filed by the petitioner, who is one of the tenderers, aggrieved by the action of the respondents in accepting the tender of the 3rd respondent, who, according to the petitioner, has not fulfilled the requirements, as specified in the tender schedule.

2. It is stated that the 2nd respondent issued a tender notice in Rc.No.1807/A4/04, dated 30th January 2004, inviting sealed quotations to run one medical shop in the premises of the Government General Hospital at Vijayawada. In the tender notice published, some requirements of compliance by the applicants are specified. In pursuance of the said notice issued by the 2nd respondent, the petitioner, along with the 3rd respondent and others, submitted his application with a sealed quotation. According to the petitioner, the 3rd respondent did not fulfill all the requirements specified by the authorities. Though the petitioner had fulfilled the said conditions stipulated, but, the respondents 1 and 2 have decided the 3rd respondent as the highest bidder and proposed to award the contract for which the tenders were called for. At this stage, the petitioner has come up with the present Writ Petition.

3. This Court, while issuing notice before admission, passed an interim order directing the 1st respondent not to allow the 3rd respondent to operate the medical shop. Subsequently, the official respondents as well as the 3rd respondent filed their counters and sought to vacate the above interim order. Therefore, the main Writ Petition itself heard finally at the admission stage with the consent of the parties.

4. The main grievance of the petitioner is that it had enclosed all the documents as stipulated in the tender notification as well as the tender schedule, whereas the 3rd respondent did not fulfill the said stipulations by enclosing the required documents. But, however, contrary to the stipulations, instead of rejecting the application/tender of the 3rd respondent, the respondents 1 and 2 have accepted the tender of the 3rd respondent. Hence, the petitioner sought for an order setting aside the acceptance of the tender of the 3rd respondent for running the medical shop in the premises of the Government General Hospital, Vijayawada.

5. As per the tender notice published in the news-paper, the following the are requirements that are to be fulfilled by the tenders:

i. Dedicated exclusively to health care;
ii. Minimum of five years of registration;

iii. Proven track record of work in health care;

iv. Valid and continued 80G tax exemption for last 3 years;

v. Valid and continued F.C.R.No.,

vi. Solvency certificate.

While in the tender schedule, the respondents have stipulated the following additional requirements in Paragraph-24:

i. Demand Draft for Rs.1,00,000/- in favour of Superintendent, Convener, HDS, GGH, Vijayawada as EMD;

ii. Copy of the registration certificate under APGST duly attested by Gazetted Officer;

iii. Copy of the valid drug license duly attested by Gazetted Officer;

iv. Income tax & Sale tax clearance certificate

(The successful bidder has to submit the original documents for scrutiny.)

6. According to the petitioner, it has fulfilled all the conditions stipulated by enclosing all the necessary documents and the 3rd respondent did not fulfill the said requirements. It is also the contention of the petitioner that by virtue of Clause-26, the application forms, without enclosing the required documents as per the Terms specified in Condition No.24, have to be rejected. Therefore, it is contended that in terms of Clause 26, for non-compliance of the conditions stipulated in Clause No.24, the tender of the 3rd respondent is liable to be rejected. But, ignoring the said stipulations, the respondents 1 and 2 have accepted the tender of the 3rd respondent, which is illegal and without jurisdiction.

7. This contention of the petitioner is disputed by the 3rd respondent stating that it has fulfilled all the requirements stipulated, enclosing the documents stipulated in Para 24 of the tender schedule.

8. But in the counter filed by the respondents 1 and 2, they have stated that none of the tenders have fulfilled all the requirements stipulated by them. Therefore, all the tenders received were considered on merits and the tender of the 3rd respondent being the highest one at Rs.6,01,000/-, was accepted. On the other hand, in the counter filed by the 3rd respondent it was specifically referred to the communication given by the 2nd respondent dated 27.2.2004 in which the 3rd respondent was asked to produce the following documents: -

i. Clearance certificate from the sales-tax and income-tax authorities (original)

ii. Solvency certificate (in original)

iii. Original certificates for the copies submitted along with tender document.

9. But, contrary to what was stated in the counter, the learned counsel for the 3rd respondent sought to contend that the 3rd respondent has complied with all the requirements by enclosing all the documents that are required, and therefore, the learned counsel sought for dismissal of the Writ Petition. The learned counsel for the 3rd respondent relied upon a Judgment of the Supreme Court in the case of ***Director of Education v. Educomp Datamatics Ltd.*** and contended that in every case of this nature the authorities must be given a level playing field so as to adjust the requirements and in the process the respondents authorities have certain concessions for compliance even after opening the tenders and when once the requirements are complied with, no grounds would exist for interfering with such actions, especially when the requirements are complied with. Therefore, learned counsel sought to dismiss the Writ Petition.

10. The learned Government Pleader appearing on behalf of the official respondents also contended that none of the tenderers have fulfilled all the requirements, and therefore, all the tenders are considered on merits and only the highest tender was accepted by the authorities, and therefore, there is no illegality or irregularity in the action of the respondents.

11. Heard the learned counsel for the petitioner, the learned Government Pleader, and the learned counsel appearing for the 3rd respondent, and considered the material on record.

12. A perusal of the stipulations prescribed by the respondents 1 and 2 in the tender notice as well as in the tender schedule are not consistent and comprehensive. There is no consistency as to what is sought to be required to be fulfilled by the tenderers. Many of the terms are so vague. It is difficult to comply with the said stipulations. However, admittedly, the authorities have stated that few essential conditions are to be complied with, such as furnishing of sales tax, and income tax clearance certificates and solvency certificate. But, however, in the tender schedule, where the terms of compliance was specified in Para-24, it does not contain about the solvency certificate, though contains the requirement of clearance certificate from

the sales tax and income tax departments, apart from other requirements of registration certificate under APGST and a valid licence duly attested by the Gazetted Officer; in addition to a demand draft for rupees one lakh in favour of the 2nd respondent. A perusal of the records show that a tabular statement has been prepared by the office of the 2nd respondent, which shows that with reference to the Sales ttax clearance certificate, it was recorded in the statement that none of the tenderers have furnished. But a perusal of the application along with the enclosures, which are available in the file, clearly shows that the petitioner has furnished the sales-tax clearance certificate issued by the Assistant Commissioner of Commercial Taxes, dated 13.02.2004. But, contrary to the existence of such certificate it was recorded in the tabular statements as if the petitioner did not submit such certificate. With reference to all other certificates in the tabular statement, it is shown that the petitioner has complied the requirements; whereas the 3rd respondent is shown to have not submitted the income-tax and sales-tax clearance certificates, solvency certificate and a certificate of proven track in health care. Therefore, by recording incorrect facts in the tabular statement, the petitioner and the 3rd respondent were treated on the same footing though the 3rd respondent was that they have not complied with the requirements stipulated. Further, it is also clear from the entry register maintained by the 2nd respondent, where the entries of various applications are specified including the enclosures, the said entries clearly show that with reference to the 3rd respondent, there is no entry showing that he has submitted sales-tax clearance certificate as well as the solvency certificate as required in terms of the tender notice and the schedule.

13. At the time of hearing, the learned counsel for the 3rd respondent sought to contend that the 3rd respondent has furnished copies of the sales-tax clearance certificate, and it was contended that as far as the income-tax clearance certificate is concerned, as per the memo issued by the Department, no such income-tax clearance certificate will be issued for the submission of tenders, and therefore, as per the memo issued by the Government no income-tax clearance certificate is required. The learned counsel also sought to rely upon the endorsement on the application submitted along with the tender. In fact, the entries mentioned in the application shows that sales-tax clearance certificate dated 19.2.2004 was furnished

along with the tender application, but the record, which contains the application along with the enclosures, does not contain such certificate, which is clearly evident that such an endorsement ought to have been made subsequently to benefit the 3rd respondent. Though it is very clear from the communication given by the 2nd respondent to the 3rd respondent dated 27.2.2004 that the 3rd respondent was asked to produce the sales-tax clearance certificate, which according to the 2nd respondent was not enclosed along with the tender application, apart from the solvency certificate. In view of the above clear omissions on the part of the 3rd respondent, the tender application filed by it ought not to have been considered by the respondents-authorities and the same ought to have been rejected in terms of Clause-26 of the tender schedule. Further, as the conditions stipulated in the tender notice as well as in the tender schedule are not consistent, many other similarly situated persons may not have made their applications.

14. Though the learned counsel for the 3rd respondent relied upon a Judgment of the Supreme Court in the case of ***Director of Education v. Educomp Datamatics Ltd.*** (1 supra), according to which the authorities must be given some level playing field, but, such level playing field should not be allowed to misuse their discretion by considering the tender applications, which did not comply with the requirements as stipulated in the tender notice and schedules issued by the authorities.

15. Under the above circumstances, this Court is of the opinion that it would be proper to set aside the present process of selection of an applicant to run the medical shop at the Government General Hospital, with a direction to the official respondents to issue fresh notice clearly specifying the conditions or stipulations required to be complied with by an applicant/tenderer for being considered for allotment of the shop to run in the premises of the Government Hospital, Vijayawada. The said process is directed to be completed expeditiously, preferably within a period of six weeks and select the suitable applicant for running the medical shop.

16. The writ petition is accordingly allowed. No costs.

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S. ANANDA REDDY, J.

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KVH

Sd/-

Assistant Registrar,

// TRUE COPY //

SECTION OFFICER

To

1. The Chairman, HDS Government General Hospital, Vijayawada.

2. The Superintendent/Convener, HDS, Government General Hospital, Vijayawada

3. Two CCs., to G.P. for Medical, Health & F.P., High Court buildings, Hyderabad. (OUT)

4. Two CD Copies.

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THE HON'BLE MR. JUSTICE S. ANANDA REDDY

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W.P.No. 3728 of 2004

ORAL ORDER

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